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No. 93-397

IN THE
Supreme Court of the United States
FOR ARGUMENT OCTOBER TERM, 1993

ASSOCIATED INDUSTRIES OF MISSOURI
and
ALUMAX FOILS, INC.,
Petitioners,
v.
JANETTE M. LOHMAN, DIRECTOR OF REVENUE,
and
DELONG'S, INCORPORATED, THE CITY OF BLUE SPRINGS, GARY MARKENSON, THE MISSOURI ASSOCIATION OF COUNTIES, THE MISSOURI MUNICIPAL LEAGUE, and THE ASSOCIATED GENERAL CONTRACTORS OF MISSOURI,
Respondents.

On Writ of Certiorari to the Supreme Court of Missouri

BRIEF OF THE CITIES OF ST. LOUIS, JEFFERSON, KANSAS CITY, ST. CHARLES, ST. JOSEPH, SPRINGFIELD, COLUMBIA, INDEPENDENCE, JOPLIN, BRANSON, CAPE GIRARDEAU, AND LEE'S SUMMIT AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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MOTION FOR LEAVE TO FILE BRIEF OF THE CITIES OF ST. LOUIS, JEFFERSON, KANSAS CITY, ST. CHARLES, ST. JOSEPH, SPRINGFIELD, COLUMBIA, INDEPENDENCE, JOPLIN, BRANSON, CAPE GIRARDEAU, AND LEE'S SUMMIT AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Pursuant to Rule 37.3 of the Rules of this Court, *amici* respectfully move for leave to file the attached brief *amici curiae* in support of Respondents. Respondents have consented to the filing of this brief; their letters of consent

have been filed with the Clerk. This motion is made necessary because Petitioners have refused consent.

Amici, municipalities across the state of Missouri, have a compelling interest in the issues relating to state and local taxation presented by this case. *Amici* are among Missouri's largest and most populous cities, each at the crossroads of a significant volume of interstate and in-state commerce, and each imposing a combined city and county local sales tax equal to or higher than the supplemental use tax rate imposed by Mo. Rev. Stat. (1992) § 144.748, the statute at issue in this case. They depend heavily upon the revenue generated by Missouri's taxation system, and specifically the section 144.748 supplemental use tax. Any ruling by this Court striking down the section 144.748 use tax will severely limit *amici* in their ability to provide services necessary for the effective administration of local government, and threatens to alter the fundamental design of the tax structure each has chosen in order to provide such administration. In light of the significant and particular commercial, financial, and institutional concerns at stake, *amici* have a vested and compelling interest in ensuring that Missouri's supplemental use tax remains a viable instrument of local governance.

Accordingly, *amici* seek leave to file this brief to assist the Court in its resolution of the case.

Respectfully submitted,

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February 24, 1994

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE *AMICI*	2
STATEMENT	2
ARGUMENT	8
I. MISSOURI'S ADDITIONAL USE TAX IS CONSTITUTIONAL UNDER THE STANDARD ADOPTED IN *COMPLETE AUTO TRANSIT, INC. v. BRADY*	8
A. The Missouri Use Tax Is A Constitutional Method Of Dealing With Practical Issues Of State Taxation	9
B. *General American Tank Car Corp. v. Day* Is Controlling Precedent And Compels The Constitutionality Of Missouri's Use Tax	12
II. *GENERAL AMERICAN* REMAINS GOOD LAW, AND IS CONSISTENT WITH THIS COURT'S COMMERCE CLAUSE JURISPRUDENCE	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases — Page

Bacchus Imports, Ltd. v. Dias, 468 U.S. 263 (1984) 13
Boston Stock Exchange v. State Tax Comm'n., 429 U.S. 318 (1977) 10
Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981) 12
Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) 8, 10
D.H. Holmes Co., Ltd. v. McNamara, 486 U.S. 24 (1988) 9
Exxon Corp. v. Gov. of Maryland, 437 U.S. 117 (1978) 12
General American Tank Car Corp. v. Day, 270 U.S. 367 (1926) 12, 13, 14, 15
Goldberg v. Sweet, 488 U.S. 252 (1989) 8, 9, 11
Gregg Dyeing Co. v. Query, 286 U.S. 472 (1932) .. 10
Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963) 13
Henneford v. Silas Mason Co., 300 U.S. 577 (1937) 9, 10
Quill Corp. v. North Dakota, —— U.S. ——, 112 S.Ct. 1904 (1992) 8, 14
Runyon v. McCrary, 427 U.S. 160 (1976) 14
Travellers' Ins. Co. v. Connecticut, 185 U.S. 364 (1902) 15
Trinova Corp. v. Michigan Dep't. of Treas., 498 U.S. 358 (1991) 8
Washington Dep't. of Revenues v. Ass'n. of Washington Stevedoring Cos., 435 U.S. 734 (1978) 9
Williams v. Vermont, 472 U.S. 14 (1985) 9, 10, 11

Statutes

Missouri Revised Statutes (1992)

Sections 66.600-66.630 ..... 2, 3
Sections 67.500-67.545 ..... 2, 5
Sections 92.400-92.420 2
Sections 94.500-94.510 ..... 2, 5
Sections 94.600-94.655 2
Sections 94.700-94.745 2

TABLE OF AUTHORITIES—Continued

Page

Section 94.850 3
Section 144.020 2
Section 144.610 5
Section 144.748 ..... *passim*

Constitutions

Constitution of the State of Missouri (1945, as amended)

Article IV, Section 43(a) 2
Article IV, Section 47(a) 2

Reporters

Multistate Sales Tax Guide (CCH) (1994) 6, 11

Publications and Other Authorities

Boom Town Deals With Sweet Smell of Success, Chicago Tribune, December 5, 1993 5
Yes Finally, A Local Use Tax, Missouri Municipal Review, September 1991 2
Missouri Official Manual (1993-1994) 4, 5
Hellerstein and Hellerstein, *State and Local Taxation* (5th ed. 1988) 4
Tribe, *American Constitutional Law* (2d ed. 1988) 8

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INTEREST OF THE *AMICI*

The interest of *amici* is set forth in the motion accompanying this brief.

STATEMENT

For years, goods purchased in Missouri were taxed at a higher rate than the same goods purchased across the state's borders but nonetheless used and enjoyed within the state. As a result, shoppers often found it cheaper to take their business to other states and bring goods back to Missouri to use. Muncipalities, however, were deprived of the revenue accompanying in-state purchases, and local vendors lost business due to the advantage given interstate commerce by the tax structure. *See* Benton, Yes Finally, A Local Use Tax, Missouri Municipal Review, Sept. 1991.

This situation was created by the sales and use taxes in place in Missouri prior to 1992. A statewide sales tax of 4.225% was, and continues to be, levied on purchases of personal goods in the state. Mo. Rev. Stat. (1992) § 144.020; Mo. Const. Art. IV, §§ 43(a), 47(a). The sales tax is collected at the place of the sale, and (except for automobiles and boats) is uniform even when the purchaser transports the item elsewhere.

Further, since 1969, counties and municipalities have been authorized to supplement this statewide tax with additional local sales taxes.[1] Pursuant to this authority, a majority of Missouri's taxing jurisdictions have enacted such additional sales taxes through local action, including voter approval. As of the beginning of 1992, for instance, the city of Columbia had imposed an additional 1.75% in sales taxes (Record, in Supplemental Legal File at 16),

[1] *See, e.g.*, Mo. Rev. Stat. (1992) §§ 66.600-.630; 67.500-.545; 92.400-.420; 94.500-.510; 94.600-.655; 94.700-.745.

and St. Louis City added 1.5% to the statewide rate (Record, in Supplemental Legal File at 32). Moreover, since many counties also imposed supplemental sales taxes, residents in most cities (with the exception of St. Louis)[2] paid not only the municipal, but also the county sales tax. In cities like Columbia, then, citizens paid a total of 2.25% in sales tax on each purchase: 1.75% imposed by the city and .5% by Boone County (Record, in Supplemental Legal File at 16). And in cities such as Independence and St. Charles, each with a 1% municipal sales tax, the *additional* sales rates imposed respectively by Jackson and St. Charles counties resulted in a total sales tax of 1.75% and 2.5% (Record, in Supplemental Legal File at 22, 32).

In this way, people buying in the vast majority of Missouri's municipalities were required to pay not only the 4.225% statewide sales tax, but also *additional* taxes imposed by the city and/or county in which the purchase occurred. In some cities, this additional tax burden is as high as 3.5% *over and above the statewide sales tax* (App. 67). Indeed, the lower court found as fact that *in-state sales* were subject to a local sales tax burden of about $100 million *more* than the amount that would have been generated were a uniform, rather than a locally variable, sales tax of 1.5% imposed statewide (Pet. App. A-38).

[2] The city of St. Louis is not located in a county, though St. Louis county is home to more than 92 separate incorporated areas which are authorized to levy sales taxes. In addition to the county itself, which levies its own tax, at one time virtually all of these jurisdictions levied a separate sales tax, or had the prerogative to do so. To eliminate that patchwork, the local tax prerogative was withdrawn so that there would be one consolidated rate of 2% in the county (with the money collected by the county and redistributed in part back to the localities). *See* Mo. Rev. Stat. (1992) §§ 66.600-.630. In the most recent legislative session, however, a county-wide tax was essentially retained, but each of the incorporated towns or cities within the county was given the authority to levy a supplemental sales tax of .125 to .25%. Mo. Rev. Stat. (1992) § 94.850.

The localities imposing the highest additional sales taxes, such as *amici,* tend to be the most populous, drawing significant amounts of commerce and depending upon the generated revenue to support social services, maintain infrastructures, and balance finances.[3] Revenues generated from local sales taxes, which in the St. Louis area alone totaled nearly $50 million in 1993, are used not only to support general and necessary government services—for the benefit of residents and interstate visitors alike—but also for specific purposes such as the maintenance of local transit systems.[4] As of 1990, 93.14% of all Missouri's taxable sales and 73.5% of the state's population were subject to a combined local sales tax of 1.5% *or higher,* in addition to the 4.225% statewide rate, for a total of 5.725% or more (Record, in Legal File at 531, 333).[5] Specifically, *amici,* who together accounted for well over a quarter of Missouri's entire population in 1990 (Missouri Official Manual, 893-927) had

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[3] *See* Hellerstein and Hellerstein, *State and Local Taxation* 661 (5th ed. 1988) ("Municipalities and other local subdivisions of State governments have begun to rely more heavily than in the past on sales taxes to supplement the revenues from the property tax, their traditional principal source of revenue.").

[4] For example, .5% of the sales taxes imposed by the cities of Columbia and St. Louis are designated "transportation sales taxes" collected for the benefit of local transit systems (Record, in Supplemental Legal File at 16, 32).

[5] Significantly, only counties and *incorporated* municipalities have statutory authority under Missouri law to impose local sales taxes. *See* Mo. Rev. Stat. (1992) § 67.505 ("Any county may . . . impose a county sales tax . . . for the benefit of such county"); § 94.510 ("A city may . . . impose a city sales tax for the benefit of such city"); § 94.500 (defining cities as "incorporated cities" for the purposes of § 94.510). As of 1990, however, Missouri had 114 counties and 928 incorporated municipalities, for a total of 1042 taxing jurisdictions. The remainder were either *unincorporated* municipalities (260) or census designations, often with no population and unable under Missouri law to impose sales taxes of any kind (Missouri Official Manual, 893-927 (1993-94)).

each by 1992 imposed combined city and county sales taxes at a rate of 1.5% or more.[6]

In contrast to those purchasing goods in-state, people buying the same or similar goods just outside the state's borders and bringing them back to use within the state were required to pay only 4.225% pursuant to Missouri's statewide use tax. § 144.610. Instituted as a complement to the sales tax, the use tax was designed to ensure that individuals did not end-run the often higher state and local sales tax by merely purchasing goods outside the state. The 4.225% tax was, however, ill-suited to this purpose. With the additional sales taxes imposed by the majority of cities and counties, purchases made in-state were saddled with a heavier tax burden (4.225% *plus the local sales tax rates*) than those made out-of-state (4.225% only).

In 1992, the Missouri legislature instituted an "additional use tax" to supplement the 4.225% statewide use tax. § 144.748. That measure imposed an additional tax of 1.5% on all goods bought outside the state but used within Missouri, setting the statewide use tax rate at a uniform level of 5.725%. This tax is levied on interstate purchases, no matter where in the state the items purchased are ultimately used. For *amici,* each with sales taxes of 5.725% or higher, the section 144.748 use tax eliminated or mitigated the disparity of tax burdens placed on in-state and out-of-state sales. And for out-of-state vendors, charged primarily with collecting and remitting the use tax, the uniform rate eliminated the administrative nightmare of charging different rates for

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[6] *Amici* St. Louis (pop. 396,685), Kansas City (pop. 435,146), Independence (pop. 112,301), and Springfield (pop. 140,494) are the state's four most populous cities. Missouri Official Manual, 920, 909, 908, 922. The City of Branson, Missouri is one of the fastest growing municipalities in the nation. *See* Staci Kramer, Boom Town Deals With Sweet Smell of Success, Chicago Tribune, Dec. 5, 1993, at 6.

different purchases depending on the Missouri locality in which the good is used. Out-of-state vendors, under section 144.748 are not obliged to ascertain the residence of the Missouri customer, match that residence with a specific—and constantly changing—local tax, and charge the varying specified prices for different purchases. Instead, a single rate would apply to all sales for all Missouri patrons.

Revenues collected pursuant to section 144.748 are deposited by the state's director of revenue into a "Local Use Tax Fund," and are not considered part of the total state tax revenue.[7] § 144.748. Rather, these monies are redistributed only to those localities imposing local sales taxes—*i.e.*, counties and incorporated municipalities—in proportion to the total amount each collects in local sales taxes. *Id.* The *higher* the local *sales* tax, therefore, the more money each county and city would receive from the Local Use Tax Fund. The lower court found that this structure operated as an incentive for local entities to maintain or increase the rates of their local sales taxes (Pet. App. A-38). On the whole, local sales taxes generally, and those of *amici* in particular, have either remained the same or have increased since 1992.[8] Indeed, residents in each *amici* municipality are currently subject to a combined city/county sales tax at or above 1.5% *See* Multistate Sales Tax Guide (CCH) ¶ 6-150MO, 11,531-557 (1994). *Amici,* therefore, impose a greater tax burden on sales made in each municipality than on sales made outside the state, even if the goods purchased are used and enjoyed in the city in either instance.

Since the additional use tax was enacted, it has generated substantial amounts of revenue upon which municipalities like *amici* have come to rely. In 1993, over $4.8 million was distributed to the cities of St. Louis, Columbia, Independence, St. Charles, and St. Joseph alone. *Amici* have earmarked this money for important purposes. Springfield, for instance, has planned to use the revenues to expand and better equip its police force. St. Charles will use the money to reduce a deficit in the city's self-funded insurance program, and to rehire some of the city's workforce, 10% of which was cut in 1992. The city of Independence depends upon the use tax revenue to balance its budget, and denial of these funds likely will result not only in a reduction of essential government services, but also in the termination of government workers. A repeal of section 144.748 would not only shut off this expected stream of income for most counties and municipalities, but would also require these localities to pay back revenues already received under the tax. For cities like St. Louis, then, such a measure would likely result in an immediate loss of $3.1 million in expected revenue, as well as a payback of an additional $4 million.

This case, therefore, fundamentally threatens Missouri's largest cities in several respects. It threatens to place intrastate commerce, once again, at a disadvantage vis-a-vis interstate commerce by eliminating a measure which now equalizes the tax burden. It threatens to disrupt or eliminate the services Missouri's localities provide residents as well as interstate visitors by denying the requisite funds for those services. And it threatens interference with the manner by which Missouri's counties and cities tax those given the privilege of using and enjoying goods within their jurisdiction.

---

[7] 1% of the total uniform use tax revenue collected is retained by the state to compensate for collection costs.

[8] *Compare* Record, in Supplemental Legal File at 11-37 *with* Multistate Sales Tax Guide (CCH) ¶ 6-150MO, at 11,531-557 (1994).

ARGUMENT

I. MISSOURI'S ADDITIONAL USE TAX IS CONSTITUTIONAL UNDER THE STANDARD ADOPTED IN *COMPLETE AUTO TRANSIT, INC. v. BRADY*

This Court has abandoned the rigid, formalistic Commerce Clause rules which forbade state taxation of interstate commerce. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977), the Court, in replacing this approach, emphasized the need to look past "the formal language of the tax statute [to] its practical effect" in judging its constitutional validity. In this way, as the Court has twice recently reaffirmed, the validity of a state tax on interstate commerce depends not on semantics or theorization, but on economic realities. *See Quill Corp. v. North Dakota*, —— U.S. ——, 112 S. Ct. 1904, 1912 (1992); *Trinova Corp. v. Michigan Dep't. of Treas.*, 498 U.S. 358 (1991).

Accordingly, under *Brady* a state tax on interstate commerce does not violate the Commerce Clause if (1) it is applied to an activity with a substantial nexus with the taxing state, (2) it is fairly apportioned, (3) it does not discriminate against interstate commerce, and (4) it is fairly related to services provided by the state. 430 U.S. at 279. Petitioners argue that Missouri's additional use tax violates *Brady*'s third (anti-discrimination) tenet.[9] They are wrong.

[9] In most cases, the part of the *Brady* test creating the most contention is the "fair apportionment" prong. The apportionment principle represents the Court's attempt to ensure that the "states not seek to extend their tax powers beyond their respective borders." Laurence Tribe, *American Constitutional Law* § 6-16 (2d ed. 1988). The requirement prohibits the imposition of taxes capable of repetition by many states, thus "ensur[ing] that each State taxes only its fair share of an interstate transaction." *Goldberg v. Sweet*, 488 U.S. 252, 260 (1989). Use taxes, like the one adopted by Missouri, however, do not raise apportionment concerns since (1) the state "has taxed only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed," (*Goldberg*, 488 U.S. at 262), and (2) no other state can tax the same transaction (because Missouri provides a credit against the use tax for any sales taxes paid to other states). In this way, use taxes pass the Courts "internal" and "external" consistency requirements.

A. The Missouri Use Tax Is A Constitutional Method Of Dealing With Practical Issues Of State Taxation

The constitutionality of the basic sales-use tax structure adopted by the State of Missouri is well-settled. This Court has long held that use taxes on the privilege of using goods in-state purchased outside the state do not discriminate, facially or by effect, when they are instituted to complement taxes imposed on in-state sales. *Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937). As a "necessary complement" (*Williams v. Vermont*, 472 U.S. 14, 24 (1985)) to tax burdens already imposed on in-state sales, use taxes effect the wholly permissible goals of "compensat[ing] the state for revenue lost when residents purchase out-of-state goods for use within the state," (*D.H. Holmes Co., Ltd.* v. *McNamara*, 486 U.S. 24, 32 (1988)) and eliminating any unfair advantage given interstate commerce over intrastate transactions by virtue of the state sales tax. *Henneford*, 300 U.S. at 583-85. So long as use taxes complement sales taxes and do not "unfairly burden[] commerce by exacting more than a just share from the interstate activity," they pass constitutional muster under this Court's Commerce Clause cases. *Washington Dep't. of Revenue v. Ass'n. of Washington Stevedoring Cos.*, 435 U.S. 734, 748 (1978).

Far from discriminating against interstate commerce, Missouri's use tax was implemented to eliminate the systemic discrimination against *in-state* commerce fostered by the state and local sales tax structure. Because the tax imposed on the vast majority of in-state purchases exceeded by 1.5% or more the tax on goods bought out-of-state but used in Missouri, the tax system unfairly

and artificially rendered interstate commerce more attractive than in-state commerce. In passing the supplemental use tax, Missouri merely effected the customary and permissible purposes of use taxes generally: to compensate for needed revenue lost to more lightly taxed goods out-of-state, and to hold interstate commerce to carry its fair share—but no more—of the state and local tax burden. *Williams v. Vermont*, 472 U.S. at 24. Since "equality and not preference is the end . . . achieved," the additional use tax does not discriminate against interstate commerce, and, hence, passes constitutional muster. *Henneford*, 300 U.S. at 586 (quoting *Gregg Dyeing Co. v. Query*, 286 U.S. 472 (1932)).

Petitioners argue that Missouri's sales-use tax structure is unconstitutional because local variations in the sales tax rates result in a lower sales tax in certain jurisdictions than the statewide uniform use tax (Pet. Br. 14). This argument, however, ignores the very purpose of a complementary tax. Such taxes do not *duplicate* the burden placed on *in*-state commerce; they merely *complement* that burden, ensuring that no greater, but no less of, a burden is placed on *inter*state commerce. In this sense, as the Court in *Brady* held, the constitutionality of a use tax depends not on whether it matches in-state sales taxes in "form," but the extent to which its "practical effect" is a "substantially evenhanded treatment" of intrastate and interstate commerce. *See Boston Stock Exchange v. State Tax Comm'n.*, 429 U.S. 318, 329 (1977). As this Court explained in *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 481 (1932), "[d]iscrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with *substantial* distinctions and *real* injuries." (emphasis added).

The varying sales tax rates imposed by Missouri's localities underscores rather than frustrates the purpose of complementary taxes. Since these variations make it impossible to impose a use tax which, in "form", carbons

the sales taxes levied throughout the state, Missouri has decided upon a complementary measure which places a substantially equivalent burden on out-of-state purchases in economic "effect": over 90% of the purchases made in Missouri are saddled with a tax equal to or greater than that imposed on out-of-state sales. Indeed, each *amicus* currently taxes in-city sales at least as heavily as interstate sales, and some—including Branson and St. Charles—impose a combined local sales tax at *twice* the rate of that imposed on goods brought to the city but purchased out-of-state. Multistate Sales Tax Guide, ¶ 6-150MO, 11,533, 11,552 (1994). As the effect of the additional use tax is merely to end, or at least make less salient, the disparate treatment of in-state and out-of-state sales, that the local sales tax rates vary is constitutionally irrelevant, for the statute does not discriminate against interstate commerce.

Moreover, the remedy sought by Petitioners—the wholesale unconstitutionality of section 144.748 (the entire statewide 1.5% use tax)—would fundamentally interfere with local governance. Municipalities such as *amici* depend heavily upon revenues generated from local sales taxes as well as the additional use tax. *Amici* rely upon this revenue to fund the range of services which residents and visitors expect and demand of local government. Petitioners would deprive cities like *amici* these funds because the *form* of section 144.748 does not precisely duplicate that of the local sales taxes. But this court has recognized that "the States have large leeway in making classifications and drawing lines which in their judgment produce *reasonable* systems of taxation." *Williams v. Vermont*, 472 U.S. at 22 (emphasis added). The State of Missouri and its localities have decided upon a system of taxation which reasonably distributes a tax burden between in-state and interstate commerce, without discriminating against either. *See Goldberg v. Sweet*, 488 U.S. 252, 267 (1989) ("interstate commerce may be required to contribute to the cost of providing *all*

governmental services, including those services from which it arguably receives no direct 'benefit.'") (quoting *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 627 (1981)). This decision should not be disturbed by Petitioners' elevation of form over practical economic reality.

B. *General American Tank Car Corp. v. Day* Is Controlling Precedent and Compels The Constitutionality Of Missouri's Additional Use Tax

This is not the first time this Court has had occasion to judge the constitutionality of a uniform use tax imposed as a complement to varying local sales taxes. In *General American Tank Car Corp. v. Day*, 270 U.S. 367 (1926), the Court examined a system of taxation strikingly similar to that of Missouri and held that it raised no constitutional concerns. The *General American* holding is controlling precedent, the logic of which compels that the constitutionality of Missouri's use tax be affirmed.

At issue in *General American* was the constitutionality of a uniform statewide tax of 25 mills imposed on the rolling stock of non-resident corporations while local taxes imposed variable tax burdens on the rolling stock of resident corporations. Accordingly, as the Court explained, "in some parishes, local taxes exceed twenty-five mills and in others they are less than that amount. . . ." 270 U.S. at 371. That some parishes taxed at less than the 25 mill rate was not the focus of the Court's constitutional analysis. Rather, the Court examined whether the tax worked an *overall* discrimination against out-of-state corporations, and did not narrowly look to the disparities of particular and discrete locations. As long as the tax did not create a *general* disparity in the treatment of in-state and interstate commerce, it passed constitutional muster, for the Commerce Clause "protects the *interstate market, not particular interstate firms.*" *Exxon Corp. v. Gov. of Maryland*, 437 U.S. 117, 127-28 (1978) (emphasis added).

Missouri's additional use tax falls within the sweep of the *General American* standard, and thus should be held constitutional. The disparities created by the local sales taxes are constitutionally irrelevant since, overall, interstate commerce is treated no worse—and often is treated better—than in-state commerce. Because section 144.748 works no discrimination against interstate commerce, as opposed to particular firms operating in particular locations, it is not discriminatory under the Commerce Clause.

The cases cited by Petitioners do not compel a contrary result. In each of those cases, the tax at issue uniformly and consistently treated in-state transactions more favorably than interstate transactions. Accordingly, the overall effect of those taxes was to burden out-of-state commerce more heavily than in-state commerce. In *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963), for instance, the use and sales taxes were applied to different tax bases such that the use tax was simply taxing more things than the sales tax. Thus, even though the rates imposed by both taxes were identical in form, the practical effect was that interstate commerce was taxed more heavily by the use tax than in-state commerce was by the sales tax. The tax at issue here, however, is almost the diametric opposite of the one considered in *Halliburton*: while the use and sales taxes differ in some jurisdictions in form, the *practical effect* is that the vast majority of interstate purchases are taxed at a rate equal to or *less* than that imposed on in-state purchases.

Further, in those cases cited by Petitioners, there was evidence of the kind of protectionism in favor of local interests which is prohibited by the Commerce Clause. In *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984), for instance, the state imposed an excise tax on wholesale liquor sales which exempted locally produced liquors. The Court held that the statute was "mere protection-

ism," and hence, unconstitutional. *Id.* at 276. In this case, however, since more than 90% of Missouri's in-state sales are taxed more heavily than out-of-state sales, it is difficult to describe the state's use tax as "protectionist."

Petitioners' cases are therefore inapposite, and Missouri's additional use tax should be upheld under the doctrine articulated by the Court in *General American*.

II. *GENERAL AMERICAN* REMAINS GOOD LAW, AND IS CONSISTENT WITH THIS COURT'S COMMERCE CLAUSE JURISPRUDENCE

General American signaled to the states and their localities a simple and understandable constitutional principle: they may resolve the practical problems which attend the creation of a complement to varying local taxes as long as the resolution works no overall discrimination against interstate commerce. Missouri, in enacting section 144.748, acted within the parameters established by *General American* in establishing a sales-use tax structure which fairly and reasonably distributes the tax burden between interstate and intrastate commerce, and upon which the state's localities have come to rely for a substantial amount of operating revenue. This Court has recently held, in the context of the Commerce Clause, that "[t]he 'interest in stability and orderly development of the law' that undergirds the doctrine of *stare decisis*, therefore counsels adherence to settled precedent." *Quill Corp.*, 112 St. Ct. at 1916 (quoting *Runyon v. McCrary*, 427 U.S. 160, 190-191 (1976) (Stephens, J. concurring)).

Aside from considerations of *stare decisis*, *General American* should be reaffirmed because it remains consistent with this Court's Commerce Clause jurisprudence. Contrary to Petitioners' claim, this Court has not held that the constitutionality of a use tax depends on its duplication of in-state taxes for *every* transaction. Indeed, given the wide array of independent taxing authority granted a state's various localities, such a holding would compel a legislature to micromanage state and local taxation with regard to every purchase to ensure an exact match between the state use tax and the sales taxes of hundreds of counties and cities. And while the legislature could also create across-the-board uniformity by divesting the localities of their ability to tax at all—or to tax at varying rates—neither one of these measures is required by the Commerce Clause.

The Constitution requires nothing less—but nothing more—than the even-handed treatment of in-state and interstate *commerce*. The focus, therefore, is on the practical effect of the tax on a "*class*" of commerce, and not on particular, discrete markets or firms within that class. *See Travellers' Ins. Co. v. Connecticut*, 185 U.S. 364, 367-68 (1902) (emphasis added). Absent a demonstration that the tax at issue treats the class of interstate commerce less favorably than the class of in-state commerce, there is no discrimination under the Commerce Clause. By looking to the *average* burden imposed on in-state and out-of-state corporations by the uniform and variable taxes at issue, the Court in *General American* employed a standard for resolving a unique and practical problem of state and local taxation that remains true to this Court's evolving Commerce Clause analysis. There is therefore simply no reason to overrule *General American*, and, on the contrary, every reason to reaffirm it.

CONCLUSION

The judgment of the Supreme Court of Missouri should be affirmed.

Respectfully submitted,

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